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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Long-Term Care Administrators, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC95-30-10 et seq.
Regulation title	Regulations Governing the Licensure of Assisted Living Facility Administrators
Action title	Establishment of requirements for licensure
Document preparation date	7/22/05

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Pursuant to the 2005 Acts of the Assembly (Chapters 610 and 924), the Board of Long-Term Care Administrators has a mandate to promulgate regulations for the licensure of assisted living facility administrators. Section 54.1-3102 was amended to mandate licensure: *“In order to engage in the general administration of an assisted living facility, it shall be necessary to hold an assisted living facility administrator's license or a nursing home administrator's license issued by the Board. However, an administrator of an assisted living facility licensed only to provide residential living care, as defined in § 63.2-100, shall not be required to be licensed.”* In development of regulations, the Board will establish criteria for licensure, including educational and experiential qualifications and a competency assessment, standards for practice and provisions for renewal and reinstatement. The Board is mandated to have regulations for licensure in effect by July 1, 2007.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Board of Long-Term Care Administrators the authority to promulgate regulations and to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title...*

The specific authorization to promulgate regulations for implementation of licensure of assisted living facility administrators is found in Chapter 31 of Title 54.1 in the following sections:

CHAPTER 31.

NURSING HOME AND ASSISTED LIVING FACILITY ADMINISTRATORS.

§ 54.1-3100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Assisted living facility" means any public or private assisted living facility, as defined in § 63.2-100, that is required to be licensed as an assisted living facility by the Department of Social Services under the provisions of Subtitle IV (§ 63.2-1700 et seq.) of Title 63.2.

"Assisted living facility administrator" means any individual charged with the general administration of an assisted living facility, regardless of whether he has an ownership interest in the facility.

"Board" means the Board of Long-Term Care Administrators.

"Nursing home" means any public or private facility required to be licensed as a nursing home under the provisions of Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 and the regulations of the Board of Health.

"Nursing home administrator" means any individual charged with the general administration of a nursing home regardless of whether he has an ownership interest in the facility.

§ [54.1-3101](#). Board of Long-Term Care Administrators; terms; officers; quorum; special meetings.

The Board of Long-Term Care Administrators is established as a policy board, within the meaning of § [2.2-2100](#), in the executive branch of state government. The Board of Long-Term Care Administrators shall consist of nine nonlegislative citizen members to be appointed by the Governor. Nonlegislative citizen members shall be appointed as follows: three who are licensed nursing home administrators; three who are assisted living facility administrators; two who are from professions and institutions concerned with the care and treatment of chronically ill and elderly or mentally impaired patients; or residents; and one who is a resident of a nursing home or assisted living facility or a family member or guardian of a resident of a nursing home or assisted living facility. One of the licensed nursing home administrators shall be an administrator of a proprietary nursing home. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth.

After the initial staggering of terms, the terms of Board members shall be four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed consistent with § [54.1-107](#).

The Board shall annually elect a chairman and vice chairman from among its membership. Five members of the Board, including one who is not a licensed nursing home administrator or assisted living facility administrator, shall constitute a quorum. Special meetings of the Board shall be called by the chairman upon the written request of any three members.

All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of expenses shall be provided by the Department of Health Professions.

The Department of Health Professions shall provide staff support to the Board. All agencies of the Commonwealth shall provide assistance to the Board, upon request.

The Board shall be authorized to promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

§ [54.1-3102](#). License required.

A. In order to engage in the general administration of a nursing home, it shall be necessary to hold a nursing home administrator's license issued by the Board.

B. In order to engage in the general administration of an assisted living facility, it shall be necessary to hold an assisted living facility administrator's license or a nursing home administrator's license issued by the Board. However, an administrator of an assisted living facility licensed only to provide residential living care, as defined in § [63.2-100](#), shall not be required to be licensed.

§ [54.1-3103](#). Administrator required for operation of nursing home; operation after death, illness, etc., of administrator; notification of Board.

All licensed nursing homes within the Commonwealth shall be under the supervision of an administrator licensed by the Board. If a licensed nursing home administrator dies, becomes ill, resigns or is discharged, the nursing home that was administered by him at the time of his death, illness, resignation or discharge may continue to operate until his successor qualifies, but in no case for longer than is permitted by the licensing authority for the nursing home. The temporary supervisor or administrator

shall immediately notify the Board of Long-Term Care Administrators and the Commissioner of Health that the nursing home is operating without the supervision of a licensed nursing home administrator.

§ 54.1-3103.1. Administrator required for operation of assisted living facility; operation after death, illness, etc., of administrator; notification of Board; administrators operating more than one facility.

A. All licensed assisted living facilities within the Commonwealth shall be under the supervision of an administrator licensed by the Board, except as provided in subsection B of § 54.1-3102. If a licensed assisted living facility administrator dies, becomes ill, resigns, or is discharged, the assisted living facility that was administered by him at the time of his death, illness, resignation, or discharge may continue to operate until his successor qualifies, but in no case for longer than is permitted by the licensing authority for the facility. The temporary supervisor or administrator shall immediately notify the Board of Long-Term Care Administrators and the Commissioner of the Department of Social Services that the assisted living facility is operating without the supervision of a licensed assisted living facility administrator.

B. Nothing in this chapter shall prohibit an assisted living administrator from serving as the administrator of record for more than one assisted living facility as permitted by regulations of the licensing authority for the facility.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

With the introduction of HB2512 and SB1183, proponents of legislation for tighter controls over the assisted living facilities, including licensure of the administrators, argued that the current regulatory scheme was insufficient to ensure the health, safety and welfare of residents who are increasingly becoming a more frail population in need of a higher level of competency for caregivers. In the current healthcare environment, residents of assisted living facilities often have similar characteristics to patients in nursing homes, so additional competencies and accountability are necessary through licensure by the Board.

The primary challenges and issues to be addressed in the development and implementation of the regulation will be to write rules that: 1) recognize the training and experience of current administrators, but also will ensure competency and consistency with new requirements; 2) establish educational standards without the ready availability of specific course work in assisted living; and 3) establish the fiscal viability of a regulatory/disciplinary program under the Board of Long-Term Care Administrators with fees that are reasonable and not prohibitive. In addition, the Board will have the challenge of identifying or developing a competency evaluation or examination that is defensible and assures minimal competency, since there are varying standards in other states rather than one recognized nationally for this profession.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

There are no alternatives to the proposed regulatory action; it is mandated by Chapters 610 and 924 of the 2005 Acts of the Assembly. The sixth enactment mandates: “That the Board of Long-Term Care Administrators shall adopt final regulations to implement the provisions of this act to be effective on or before July 1, 2007.” Therefore, the Board must begin to convene a task force for development of the rules governing the educational programs, curriculum, competency evaluation, licensure and practice of assisted living facility administrators.

Regulations for assisted living facility administrators will contain some provisions similar to those required for nursing home administrators, such as requirements for posting of the license in the facility, notification to the Board of current name and address, a schedule for renewal, and fees for functions such as application and renewal. The Board will determine qualifications for initial licensure, to include evidence of education, experience and examination and for licensure by endorsement. It may also require continuing education for renewal of licensure.

The Board will utilize the work of the Board of Health Professions in its 2004 Study of the Need to Regulate Assisted Living Administrators. During the course of its study, it received public comment about qualifications, accumulated information about regulations in other states and identified options for education and examination. Its goal will be to develop regulations that provide some assurance that the administrator is sufficiently educated and trained to handle the increasing complexity of an assisted living facility and to adequately protect and care for the residents of that facility. Since the regulation excludes from the licensure requirement any assisted living facility licensed only to provide residential living care, as defined in § [63.2-100](#), only the facilities that provide assisted living care (which tend to be the larger facilities) will need to have a licensed administrator.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will have no impact on the institution of the family and family stability.